



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO UNIVERSITY OF VIRGINIA FOUNDATION FOR BIRDWOOD GOLF COURSE Virginia Pollutant Discharge Elimination System Permit Registration No. VAR10L442

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and the University of Virginia Foundation, regarding the Birdwood Golf Course, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit, and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expired on June 30, 2019.

2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
3. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means the discharge of a pollutant.
9. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
10. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
11. "Facility" or "Site" means the Birdwood Golf Course located at 410 Golf Course Drive, Charlottesville, Virginia, from which discharges of stormwater associated with construction activity occur.
12. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

13. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
14. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
15. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
16. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
17. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
18. "Pollution" means "such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are 'pollution.'" Va. Code § 62.1-44.3.
19. "Registration Statement" means a registration statement for coverage under the 2019 Permit.
20. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions. 9 VAC 25-210-10.

21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
22. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands as defined in Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
23. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
24. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
25. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
26. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
27. "USACE" means the United States Army Corps of Engineers.
28. "UVAF" means University of Virginia Foundation, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. University of Virginia Foundation is a "person" within the meaning of Va. Code § 62.1-44.3.
29. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
30. "Va. Code" means the Code of Virginia (1950), as amended.
31. "VAC" means the Virginia Administrative Code.
32. "VPDES" means Virginia Pollutant Discharge Elimination System.
33. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been

established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.

34. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
35. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
36. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas as defined in 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. UVAF owns the Birdwood Golf Course Site located in Albemarle County, Virginia, from which stormwater associated with construction activity is discharged.
2. Albemarle County is the VSMP authority for the Site.
3. The Department granted UVAF coverage under the 2014 Permit, assigning it registration number VAR10L442. The 2014 Permit expired on June 30, 2019 and DEQ granted UVAF coverage under the 2019 Permit which expires on June 30, 2024.
4. The 2014 Permit allowed and the 2019 Permit allows UVAF to discharge stormwater associated with construction activities from the Site to Morey Creek and the unnamed tributaries to Morey Creek, in compliance with the terms and conditions of the Permit.
5. Morey Creek and the unnamed tributaries to Morey Creek are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
6. Morey Creek is located in the James River Basin. Morey Creek is listed in DEQ's 305(b) report as impaired for Aquatic Life.

7. On May 2, 2019, DEQ visited the Site to conduct an inspection. During the inspection, DEQ staff documented that UVAF failed to comply with the following requirements related to the SWPPP:

- a. The location of the SWPPP was not posted at a central location or main entrance to the Site. The signed registration statement in the SWPPP was not for the permitted project. The coverage letter for the 2014 Permit was not located in the SWPPP.

9 VAC 25-870-54(G) states in part: "The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site."

2014 Permit Part II(A)(1)(a) and (1)(b) state: "The SWPPP shall include the following items: A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter)."

- b. The site map in the SWPPP did not show the location of all potential pollutants or the location of the rain gauge.

2014 Permit Part II(A)1(e)(6-7) states that: "The SWPPP shall include the following items: A legible site plan identifying...locations of support activities, when applicable and when required by the VSMP authority, including but not limited to (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage. When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection purposes."

- c. The SWPPP did not include amendments for changes to the Stormwater Management Plan (SMP) or Erosion and Sediment Control (ESC) plans. The SWPPP was not amended when existing control measures were determined to be ineffective or as identified by the VSMP authority. The SWPPP did not include a record of dates when major grading activities occurred or when activities were temporarily or permanently ceased on a portion of the Site or when stabilization measures were initiated.

2014 Permit Part II(B)(1-2) states that: "The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that

has not been previously addressed in the SWPPP. The SWPPP must be amended, if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Part II G."

Part II(B)(4) states that: "The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) major grading activities occur; (2) construction activities temporarily or permanently cease on a portion of the site; and (3) stabilization measures are initiated..."

- d. Not all of the required SWPPP inspections were available at the time of the inspection and the SWPPP inspections that were available did not capture the required information. Corrective actions were not taken in the required timeframe. The person signing the inspection reports did not have authority delegated to them.

2014 Permit Part II(F)(4) states in part: "Inspection report. Each inspection report shall include the following items: The date and time of the inspection..., summarized findings of the inspection, the location of prohibited discharge; the location of control measures that require maintenance; the location of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location; ... the date and signature of the qualified personnel and the operator or its duly authorized representative."

2014 Permit Part II(G)(1) states in part: "The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority."

- 8. During the inspection on May 2, 2019, DEQ staff documented that UVAF failed to implement erosion and sediment controls in accordance with the applicable ESC minimum standards.
 - a. Upslope disturbance was initiated prior to installation of sediment trapping measures and perimeter controls.

9 VAC 25-840-40(4) states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be

constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

- b. Denuded areas remained dormant and denuded for longer than 14 days without receiving temporary or permanent stabilization.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

- c. Soil stockpiles were not adequately protected or stabilized.

9 VAC 25-840-40(2) states: “During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.”

- d. Diversion dikes were not adequately stabilized immediately following installation.

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

- e. Concentrated run off directed to cut and fill slopes was not properly contained.

9 VAC 25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

- f. Yard inlet drains were not adequately protected and accepted unfiltered runoff.

9 VAC 25-840-40(10) states: “All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

- g. A construction entrance was not installed and sediment was tracked on the paved road.

9 VAC 25-840-40(17) states: “Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is

transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.”

9. On May 7, 2019, DEQ staff conducted a Virginia Water Protection Program (VWP) inspection of the Site. DEQ staff observed measureable sediment, a pollutant, discharged into streams and wetlands, primarily adjacent to Hole Numbers 2, 3, 6, and 8. The estimated impacts were to 600 linear feet of stream channel, 0.41 acre of palustrine emergent wetland and 0.03 acre of open water. DEQ did not receive a notification of the discharge to State waters.

Va. Code § 62.1-44.15:20(A) states in part that: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: . Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

9 VAC 25-210-50(A) states that: “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: (1) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; (2) Filling or dumping; (3) Permanent flooding or impounding; or (4) New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

Va. Code § 62.1-44.5 (B) states in part that: “Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality...”

10. On May 20, 2019, DEQ issued a NOV No. 2019-VRO-0012 for the violations noted above in paragraphs C(7-9).
11. On May 21, 2019 and June 28, 2019, Department staff met with representatives of UVAF to discuss the violations, including UVAF’s plan to address the violations, particularly in regards to the impacts to streams and wetlands at the Site.

12. On May 24, 2019, UVAF has submitted documentation that verifies that the violations as described in paragraph C(9), above, have, in part, been corrected. The documentation verified that measureable sediment was removed from 350 linear feet of stream channel adjacent to Hole Numbers 2, 3, and 8.

13. Between May 24, 2019 and June 28, 2019, UVAF submitted multiple site inspection reports and restoration plans for stream and wetland impacts on the Site.

14. On July 30, 2019, DEQ staff performed a VSMP inspection at the Site to observe compliance with the 2019 Permit. DEQ staff documented that UVAF failed to implement erosion and sediment controls in accordance with applicable ESC minimum standards.

- a. Bare areas have remained denuded longer than 14 days without receiving temporary stabilization. The bed and bank of a stream crossing was left denuded.

9 VAC 25-840-40(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."

9 VAC 25-840-40(3) states: "A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion."

9 VAC 25-840-40(15) states: "The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed."

- b. Operable storm sewer inlets were not adequately protected.

9 VAC 25-840-40(10) states: "All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment."

- c. Stormwater conveyance channels were eroded and outlet protection was full of sediment.

9 VAC 25-840-40(11) states that: "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel."

- d. Sediment was tracked on paved surfaces and there were no provisions to minimize the tracking or remove the sediment from the road.

9 VAC 25-840-40(17) states: "Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities."

- e. Silt fence was not properly maintained as sediment had reached the cleanout level along multiple sections. Concrete washout pits were buried including the plastic liners.

9 VAC 25-840-60(A) states in part: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

2019 Permit Part II(F)(1) states: "All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."

- 15. The Department has not issued coverage under any permit or certificate to UVAF other than under the 2014 Permit and 2019 Permit.
- 16. Based on the results of the May 2, 2019, May 7, 2019 and July 30, 2019 inspections, the Board concludes that UVAF violated Va. Code § 62.1-44.15:20(A), § 62.1-44.5, 9 VAC 25-870-54(G), 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), 9 VAC 25-840-40(3), 9 VAC 25-840-40(4), 9 VAC 25-840-40(5), 9 VAC 25-840-40(8), 9 VAC 25-840-40(10), 9 VAC 25-840-40(11), 9 VAC 25-840-40(15), 9 VAC 25-840-40(17), the conditions of 2014 Permit Parts II(A)(1)(a), II(A)(1)(b), II(A)(1)(e)(6-7), II(F)(4), II(G)(1), III(B)(1), III(B)(2), and III(B)(4), and condition of the 2019 Permit Part II(F)(1), as described in paragraphs C(7), (8), (9), and (14) of this Order.
- 17. On January 2, 2020, UVAF staff verified that the violations described in paragraphs C(7), C(8), and C(14), above, have been corrected. The entire disturbed area of the Site has been stabilized with sod as of December 9, 2019. UVAF submitted a plan and schedule

of corrective action to address the violations described in paragraph C(9). The plan and schedule are incorporated in Appendix A of the Order.

18. In order for UVAF to complete its return to compliance, DEQ staff and UVAF have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders UVAF, and UVAF agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$76,614 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
 - a. UVAF shall indicate that a payment of \$43,680 is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).
 - b. UVAF shall indicate that a payment of \$32,934 is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

UVAF shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order. If the Department has to refer collection of moneys due under this Order to the Department of Law, UVAF shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of UVAF for good cause shown by UVAF, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2019-VRO-0012 dated May 20, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, UVAF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. UVAF consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. UVAF declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by UVAF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. UVAF shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. UVAF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. UVAF shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and UVAF. Nevertheless, UVAF agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after UVAF has completed all of the requirements of the Order;
 - b. UVAF petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to UVAF.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve UVAF from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by UVAF and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of UVAF certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind UVAF to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of UVAF.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, UVAF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15 day of April, 2020.

A handwritten signature in black ink, appearing to read "David K. Parker", written over a horizontal line.

~~Amy T. Owens, Regional Director~~
Department of Environmental Quality

DAVID K PARKER, Director

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University of Virginia Foundation voluntarily agrees to the issuance of this Order.

Date: 2/14/20 By: Tim R. Rose CEO
(Person) (Title)
University of Virginia Foundation

Commonwealth of Virginia
City/County of Albemarle

The foregoing document was signed and acknowledged before me this 14 day of

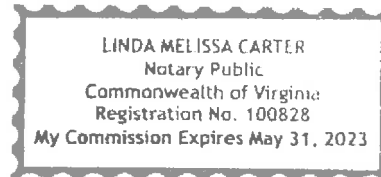
February, 2020, by Tim R. Rose who is
Secretary & CEO of University of Virginia Foundation, on behalf of the
corporation.

Linda M. Carter
Notary Public

100828
Registration No.

My commission expires: May 31, 2023

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Cleanup and Restoration of Surface Waters

- a. Within 60 days of the effective date of this Order, UVAF shall stabilize areas of sediment located in the wetland adjacent to Hole Number 6. Stabilization within designated areas shall be accomplished with seeding of a native emergent seed mix and installation of an erosion control matting. The areas designated for stabilization shall be submitted to DEQ for review and approval prior to initiation of the work.
- b. Within 60 days of the effective date of this Order, UVAF shall purchase 0.12 wetland credits from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ). UVAF shall submit documentation to DEQ for review and approval if no mitigation bank credits are available for purchase. If mitigation bank credits are not available in the area in which the impacts occurred, UVAF shall purchase 0.12 wetland credits from a DEQ-approved in-lieu fee fund that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred.
- c. Within 60 days of the effective date of this Order, UVAF shall excavate the measureable sediment from the open water adjacent to Hole Number 6 in accordance with the plan submitted on May 24, 2019.
- d. Within 60 days of the effective date of this Order, UVAF shall ensure that sediment from the disturbed areas within the short game area and upland conveyances does not adversely affect the downstream wetland system located between Holes 15 and 18 by installing appropriate erosion and sediment control measures.

2. Inspections, Recordkeeping and Reporting

Within 7 days following completion of each required action specified in 1. above, UVAF shall submit to DEQ for review the following:

- a. For 1.a, 1.c., and 1.d above, an inspection report detailing the actions taken for each area of restoration and photographic evidence of the work.
- b. For 1.b above, documentation of the mitigation bank purchase or of the in-lieu fee program credit purchase.

3. DEQ Contact

Unless otherwise specified in this Order, UVAF shall submit all requirements of Appendix A of this Order to:

Eric Millard
Enforcement Specialist Senior
VA DEQ – Valley Regional Office
PO Box 3000, Harrisonburg, VA 22801
(540) 574-7813
(540) 574-7878
Eric.millard@deq.virginia.gov